UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

THIS SUMMARY ORDER WILL NOT BE PUBLISHED IN THE FEDERAL REPORTER AND MAY NOT BE CITED A PRECEDENTIAL AUTHORITY TO THIS OR ANY OTHER COURT, BUT MAY BE CALLED TO THE ATTENTION OF THIS OR ANY OTHER COURT IN A SUBSEQUENT STAGE OF THIS CASE, IN A RELATED CASE, OR IN ANY CASE FRO PUIRPOSES OF COLLATERAL ESTOPPEL OR RES JUDICATA

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 21st day of May, two thousand and three.

PRESENT:
Hon. John M. Walker, Jr.,
Chief Judge,
Hon. Ralph K. Winter,
Circuit Judge
Hon. Gregory W. Carmen,
Chief Judge.

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*The Honorable Gregory W. Carman, Chief Judge, United States Court of International Trade, sitting by designation.

United States Court of Appeals - Second Circuit
Filed May 21 2003 Roseann B. MacKechnie, Clerk

MARTIN A. LEHMAN,

Plaintiff-Appellant,

-v.- 02-6128

JOHN DOE, Supervisor of Mary Flynn, Individually and in his official capacity as United States Postal Inspector, LINDA FARRELL,

Defendants,

FRANCIS D. QUIGLEY, Individually and in his official capacity in the Nassau County District Attorney's office, ROBERT L. EMMONS, Individually and in his official capacity in the Nassau County District Attorney's office, RODOLFO BARRIO, Individually and in his official capacity as a Nassau Police Officer, JOSEPH MOLINELLI, J. ALGIERI, Individually and in his official capacity as a Nassau County Police Officer, GEORGE V. GATS, Individually and in his official capacity as a Nassau County Police Officer, MARYANN C. FLYNN, Individually and in her official capacity as a United States Postal Inspector, GEORGE L. ROBERTS, SCOTT JAFFER, PHILIP T. BLESSINGER, ATLANTIC MUTUAL INSURANCE COMPANY, ZURICH AMERICAN INSURANCE COMPANY, UNITED POSTAL SERVICE ACE AMERICAN INSURANCE COMPANY, formerly known as Cigna Insurance Company,

Defendants-Appellees,

BARBARA KORNBLAU, Individually and in her

capacity as Assistant District Attorney of Nassau County, DENIS E.DILLON, Individually and in his official capacity as District Attorney of Nassau County, NATIONAL INSURANCE CRIME BUREAU, COUNTY OF NASSAU,

Defendants-Cross-Defendants-Appellees,

DAPHNE J. STASCA, SUNNYDALE FARMS COMPANY,

Defendants-Cross-Claimants-Appellees

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APPEARING FOR APPELLANT
MARTIN A. LEHMAN, PRO SE, West Hempstead, N.Y.

APPEARING FOR APPELLEES
Quigley, Emmons, Barrio, Algieri, Cats, Kornblau, Dillon, and County of Nassau:

DENNIS J. SAFFRAN, Nassau County Attorney, (Lorna B. Goodman, on the brief), Mineola, N.Y.

APPEARING FOR APPELLEE
Molinelli:

JOSEPH MOLINELLI, PRO SE, Oviedo, Fl.

APPEARING FOR APPELLEES
Flynn and United Postal Service:

SUSAN L. RILEY, Assistant United States Attorney for the Eastern District of New York, Central Islip, N.Y.

APPEARING FOR APPELLEES
Roberts, Jaffer and Atlantic Mutual Insurance:

ROGER A. GOODNOUGH, Torre, Lentz, Gamell, Gary & Rittmaster, Jericho, N.Y.

SUBMITTING FOR APPELLEES
Stasca and Sunnydale Farms Inc.:

ELEANOR R. GOLDMAN, Goldman and Grossman, New York, N.Y.

Appeal from the United States District Court for the Eastern District of New York (Arthur D. Spatt, District Judge).

ON CONSIDERATION WHEREOF, IT IS HEREBY ORDERED, ADJUDGED AND DECREED the the judgment of the district court be and it hereby is AFFIRMED.

Defendant-appellant Martin A. Lehman appeals from the district court's dismissal pursuant to Fed. R. Civ. P. 12(b) (1) and (6), of Lehman's seventh cause of action in his 42 U.S.C. Section 1983, 1985, 1986 and 1988 complaint against the defendants. Lehman argues that this cause of action was erroneously dismissed because the Fourteenth Amendment is "separate and distinct from 42 U.S.C. Sec.1985 (3). We affirm.

We review "de novo" the district court's decision o dismiss a claim for failure to state a claim, taking ll factual allegations as trueand construing all easonable inferences in the plaintiff's favor." Lee . Bakers Trust Co. 166 F. 3d 540, 543 (2d Cir. 1999).

In his seventh cause of action, the plaintiff alleges that defendants have acted under color of law pursuant to official policy in conjunction with law enforcement officials in contravention of Plaintiff's constitutional and statutory rights as set forth, but not limited to the Fourth and Fourteenth Amendments to the United States Constitution, as well as 42 U.S.C. 1983, 42 U.S.C. 1985. 42 U.S.C. 1986 and 28 U.S.C. 1343." The district court dismissed the seventh cause of action because it "essentially repeats the claims in the first, second and third causes of action." Lehman argues that the cause of action was erroneously dismissed because the Fourteenth Amendment is "separate and distinct from" 42 U.S.C. 1985. However, we agree with the district court that the substance of Lehman's seventh cause of action is the same as his prior claims. The seventh claim does not allege any additional facts or legal theories different from those alleged in his first three causes of action, particularly conspiracy, false arrest and malicious prosecution. The only difference between the seventh and the prior causes of action is that in the seventh Lehman includes the Fourteenth Amendment as a basis for his action. when Section 1983 provides a remedy, an implied cause of action grounded directly in the Constitution is not available. See Pauk v. Bd. of Trustees of City

Univ. of New York, 654 F. 2d 856, 865 (2d Cir. 1981). Thus, the seventh cause of action was redundant of the prior causes of action and the district court correctly dismissed it.

Accordingly, for the reasons set forth above, the judgement of the districr court is hereby AFFIRMED.

FOR THE COURT
Roseann B. Mackechnie, Clerk
By;

"S/_____-".
Lucille Carr, Deputy Clerk